

# The New Game Changer for Non-profit Retirement Plans: The 403(b) MEP



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July, 2016

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In April of 2010, PRM Consulting Group published an article titled, "*Is a Multiple Employer 403(b) Plan Right for Your Organization?*" This article focused on the feasibility of non-profit organizations coming together to create a 403(b) Multiple Employer Plan (MEP). It was and still remains one of the few articles written on 403(b) MEPs.

The genesis of the 2010 article centered on the 403(b) regulations that were issued in 2009 which resulted in 403(b) plans starting to look more like 401(k) plans. Six years later, the article still stands as one of the few communication pieces encouraging the creation of a MEP. However, since the publication of the article, most non-profit organizations have not taken advantage of participating in a 403(b) MEP. Why? For one, there was not a lot of focus by institutions on the advantages of participating in such an arrangement. More importantly, both the Department of Labor (DOL) and the Internal Revenue Service (IRS) have provided little guidance on the feasibility of implementing such plans. Accordingly, almost all non-profit organizations stayed away from implementing an arrangement that was not officially recognized. No one wanted to take the chance to create a 403(b) MEP, to potentially have the IRS not recognize the plan because of non-compliance. However, the climate on 403(b) MEPs and MEPs in general, is beginning to change.

Today there is finally some buzz in the non-profit industry on the practicality of adding a 403(b) MEP. This article will explore the reasons why, and will summarize the benefits of participating in a 403(b) MEP.

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# A Look Back

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*“There does not seem to be a compelling policy reason for the IRS to restrict 403(b) plans from forming MEPs as long as they follow the rules that otherwise apply to qualified plan MEPs.”*

EVAN GILLAR  
ERISA ATTORNEY,  
BOUTWELL FAY

Internal Revenue Code Section 413 (c) specifically addresses the special terms and conditions applicable to a MEP. The regulations under this statute were last amended in 1979. Since then, there have been thousands of 401(k) and 401(a) MEPs that have been implemented. However, 403(b) plans are not covered by Section 413 (c), and therefore are not specifically authorized to establish a MEP. They were never prohibited, just not given specific authorization. Since the amendments in 1979, 403(b) plans have evolved as they were not previously viewed as traditional retirement arrangements by the IRS. 403(b) plans were originally thought of as more akin to IRAs, i.e., individual retirement plans, more than employer sponsored plans. That all changed with the implementation of the 2009 regulations that affected all 403(b) plans. Originally, the changes created more clarity for 403 (b) plans and more uncertainty for the implementation of a 403(b) MEP. However, during the last few years, the view of 403(b) plans seems to have changed as the 2009 regulations have become a way of life for non-profit organizations, thus creating numerous analogies to 401(k) and 401(a) plans.

What attorneys, consultants, and plan sponsors are now concluding, is that **403(b) plans in virtually all areas, are relevant to the issues under Section 413 (c), and are treated the same as qualified plans**, and accordingly, it's a reasonable view to treat 403(b) MEPs the same as qualified MEPs such as 401(a) or 401(k) plans. For example, 401(a) MEPs are identified in the Code section 413 (c) and these plans receive employer contributions. 403(b) plans have always accepted employer contributions and accordingly, a 403(b) MEP with employer contributions should follow the regulations as outlined for 401(a) MEPs. An approach like this would make it challenging for the IRS to dismantle a 403(b) MEP if it followed the same parameters set up for qualified MEP arrangements.

Additionally, many rules under 403(b) plans are substantively similar to 401(a) and 401(k) plans, thus aligning these plans in such a way that now, they could be considered similar, and creating a 403(b) MEP to mirror a 401(a) MEP would make sense. **Anyone considering a 403(b) MEP today should follow a prudent path of using analogies already in place as the best approach to take.** Of course, you should seek legal counsel before you take this approach. According to Evan Giller, an ERISA attorney from Boutwell Fay, “There does not seem to be a compelling policy reason for the IRS to restrict 403(b) plans from forming MEPs as long as they follow the rules that otherwise apply to qualified plan MEPs. It would be very helpful if the IRS could provide guidance that brought some clarity to this area.”

# Recent Developments

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*“Since regulations were passed which require all ERISA 403(b) plan sponsors to ensure proper plan governance, many CICV schools have been struggling to comply.”*

ROBERT LAMBETH  
PRESIDENT,  
COUNCIL OF INDEPENDENT  
COLLEGES IN VIRGINIA

So what has changed in the last few years regarding MEPs in general, and 403(b) MEPs specifically? For one, MEPs in general are receiving a lot of notoriety as President Obama's 2017 budget proposal includes hundreds of millions of dollars in proposed funding over the next decade to encourage wider use of multiple employer plans in all industries. The proposed budget also includes pilot models for providing MEP benefits. In addition, MEPs are moving out of the shadows into the spotlight, mostly because of the obvious benefits they offer, and the ability of organizations to create more efficiencies in joining together.

Aside from the Federal Government now recommending the creation of MEPs, you also have trend setting entities taking a good look at the advantages a 403(b) MEP can offer. States like Wisconsin have started exploring how organizations in those states can benefit from a 403(b) MEP. Other states have started consortiums that are a step in the right direction, but don't take on the position of a bona fide MEP. In Virginia, several years of research have led the Council of Independent Colleges in Virginia (CICV) to go one step further and take the position that they want to be one of the leaders in this brave new world of implementing a 403(b) MEP for private colleges in the state. CICV has not taken this position casually, as they have received guidance from a variety of sources, including legal opinions from law firms as well as consulting expertise from PRM Consulting. Virginia is looking to implement a "closed" MEP for several private colleges that have agreed to participate in the process. A "closed" MEP is based on the concept that there is a nexus or organizational relationship among MEP employers through an association acting for the MEP employers. To realize the full benefits of the MEP, the combined plans must be recognized by the DOL as a single multiple employer plan for which there is a bona fide association of employers. In Virginia, with CICV serving as the association acting for the MEP, they are looking to implement an arrangement sometime in 2017. According to Robert Lambeth, President of the CICV, "Since regulations were passed which require all ERISA 403(b) plan sponsors to ensure proper plan governance, many CICV schools have been struggling to comply. CICV has been actively researching cost effective ways to ease both the administrative burden and fiduciary responsibilities of each individual CICV college regarding their employer sponsored 403(b) retirement plan."

**What do organizations gain from participating in a MEP? What are the advantages of joining?** We're glad you asked.

# Why Join a 403(b) MEP?

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*In essence, a MEP allows organizations to pool their purchasing power within a single plan.*

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As we look at the role of plan sponsors today, retirement administration is increasingly becoming a significant responsibility for employers. According to data compiled by Pentegra, a leading administrator of MEP plans, there are about 50 duties that plan administrators should be conducting on an ongoing basis. Some of these responsibilities include such things as completing Form 5500s, maintaining a written plan document, and having an accountant's opinion accompany the Form 5500 for plans with more than 100 employees. Under ERISA, institutions are also required to monitor plan investments and accordingly, several have hired registered investment advisors to monitor plan performance and fees. Additionally, regulations continue to change and employers are expected to know and follow the ERISA and IRS rules related to plan compliance.

Most employers, especially small ones, are challenged to keep up to date with all of these responsibilities and regulations. Under a 403(b) MEP, all of the items noted above, and more, would be eliminated for each entity when an organization becomes an adopting employer in a MEP.

**Joining a MEP allows economies of scale that typically reduce overall plan costs on an individual basis.** In essence, a MEP allows organizations to pool their purchasing power within a single plan. These functions would be performed by the board of overseers for the entire MEP plan (e.g., CICV). For example, there would be one plan document, one Form 5500, etc. for the entire MEP. Accordingly, 403(b) MEPs have three major benefits to individual employers:

- Streamlined Administration;
- Reduced fiduciary risk; and
- Cost efficiencies or reduction in fees.

These efficiencies trickle down to the participants as MEPs can have a direct effect on lowering plan fees for participants of individual institutions.

One of the biggest challenges in a MEP we have seen, is that Chief Financial Officers and senior level managers don't truly understand the benefit of reducing the administrative and financial burden on their institution, as they don't participate in the daily functions necessary to oversee the retirement plan at the organization. This has caused a lack of collaboration with institutions coming together for the greater good of the organization to create the MEP. However, given the country's sudden increased appetite for MEPs in general, we believe that 403(b) MEPs are going to start to take off and become a game changer in how retirement plans are administered across the country. In short, we believe the 403(b) MEP will create a new frontier for non-profit organizations that can change the industry in the coming years.

It's not too late to answer the question raised in 2010: **Is a 403(b) MEP right for your organization?** Now is the right time to consider how to design and structure a 403(b) MEP that can work for your group.